Joan Doebber, d/b/a Debber Electric *and* Local 1, International Brotherhood of Electrical Workers, AFL–CIO. Cases 14–CA–21963 and 14–RC–11158

April 14, 1994

DECISION, ORDER, AND DIRECTION

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On July 14, 1993, Administrative Law Judge Bernard Ries issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Joan Doebber, d/b/a Debber Electric, St. Louis, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

DIRECTION

It is directed that Case 14–RC–11158 is remanded to the Regional Director for Region 14 who shall, within 14 days from the date of this Decision, Order, and Direction, open and count the ballot of Bruce Henning. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

[1] The Respondent entitled its exceptions and brief as an ''Appeal.''

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. The Respondent did not specifically except to any of the judge's findings concerning complaint subpars. 5B, C, F, G, H, J, K, L, and O beyond its exception to the finding that David Von Behren was a supervisor and its exception to the remedial order as a whole.

[3] We deny the General Counsel's motion to strike the exceptions of the Respondent, which is represented by its owner appearing pro se, but we give no weight to asserted facts that are not in the record.

Lynette K. Zuch, Esq., for the General Counsel.
Joe Doebber and *Joan Doebber*,[1] of St. Louis, Missouri, for the Respondent.
James I. Singer, Esq. (Schuchat, Cook & Werner), of St. Louis, Missouri, for the Charging Party.

DECISION

BERNARD RIES, Administrative Law Judge. This matter was heard in St. Louis, Missouri, on January 26 and 27, 1993. The complaint alleges that Respondent's agents committed various violations of Section 8(a)(1), all but one in May 1992 (the year to which all dates hereafter refer unless otherwise indicated), and also, in May, violated Section 8(a)(3) in two discrete ways.[2] On June 19, an election was held among Respondent's journeymen and apprentices, resulting in a tally of two votes for the Charging Party, two votes for the Congress of Independent Unions, and two challenged ballots. In a report issued on July 2, the Regional Director consolidated the representation case with the complaint case and referred the two challenged ballots (of Bruce Henning and David Von Behren) to me for resolution.[3]

Briefs were received from all parties on or about March 3. Having reviewed the entire record,[4] the briefs, and taking into account my recollection of the demeanor of the witnesses, I make the following

FINDINGS OF FACT[5]

I. BACKGROUND FACTS

Respondent is a small firm engaged as a subcontractor in performing (primarily) electrical and (secondarily) heating, air conditioning, and ventilation work (HVAC) in St. Louis. The record shows Joan Doebber to be the firm's owner and Joe Doebber to be its manager. At material times, Joan Doebber was in charge of office work for Respondent, but apparently had little or nothing to do with the performance of construction work. Joe Doebber, who was 72 years old at the time of the hearing, had intended to retire in 1986, and the business was sold. However, on further consideration, the Doebbers bought the business back some 1-1/2 years later.

As of May, aside from the Doebbers, the firm employed six individuals: electrician and alleged supervisor and agent, David Von Behren; four employees principally engaged in electrical work (Timothy Motherway, Scott Wilke, Thomas Reilly, and Roger Stranghoener); and Bruce Henning, who was the Respondent's only qualified HVAC employee.

II. WERE VON BEHREN AND/OR HENNING STATUTORY SUPERVISORS?

Most of the alleged 8(a)(1) violations are said to have been committed by Von Behren, whose supervisory status is

[1] I note that while the name of the Respondent is spelled ''Debber,'' its owners spell their name with an ''o.''

[2] The charge in the complaint case was filed on May 20 and amended on June 29. The complaint was issued by the Regional Director for Region 14 on June 29 and was amended in writing on August 17 and again at the beginning of the hearing.

[3] Although the Union challenged Von Behren's vote on the ground that he is a statutory supervisor, and Respondent made a like claim about Henning, Respondent stated at the hearing that it did not truly believe that either man qualified as a Sec. 2(11) supervisor, but that if Von Behren was deemed to occupy such a status, then so should Henning.

[4] Certain changes in the transcript have been noted and corrected.

[5] There is no dispute that Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, or that the Charging Party is a labor organization as defined in Sec. 2(5).

denied by Respondent. Whether or not Von Behren occupies such a status is material (although not vital)[6] to the validity of the 8(a)(1) violations attributed to him. Accordingly, we shall first examine the evidence regarding Von Behren's supervisory status.

A. *Was Von Behren a Supervisor?*

Section 2(11) of the Act defines a ''supervisor'' as follows:

> The term ''supervisor'' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is accepted that the powers enumerated in Section 2(11) are to be read in the disjunctive. *NLRB v. McEver Engineering*, 784 F.2d 634, 642 (5th Cir. 1986). Thus, if an employee possesses any one of the 13 kinds of authority set out in Section 2(11), he is a ''supervisor'' for purposes of the Act (assuming the final clauses of the provision are satisfied). In *NLRB v. Security Guard Service*, 384 F.2d 143, 145 (5th Cir. 1967), Judge Goldberg referred to the difficulty of application of this definition as ''persistently vexing.'' Although the passage of 26 years has not made the question less vexing in some cases, the basis for finding Von Behren to be a statutory supervisor here, while narrow, nonetheless seems sturdy.

Of the statutory powers listed in Section 2(11), it may fairly be said that Von Behren arguably possessed only two of them at the most: the authority to ''assign'' and to ''responsibly direct'' other employees.[7] As the quoted statutory definition shows, the exercise of either power must be accompanied by independent judgment and be performed in the interest of the Respondent.[8]

Von Behren had had electrical experience for more than the 12 years (according to the stipulation, Jt. Exh. 6) that he has worked for Respondent (and its interim owner), and is the most experienced electrician employed by Debber Electric. He has known the Doebbers, first as neighbors, almost all his life, and began helping Joe Doebber at the age of 12. When, around 1987, Doebber decided to unretire and buy the business back, Doebber and Von Behren talked about the latter buying into the business, and, although that transaction was never consummated, it is still, according to Von Behren, a ''possibility.''

Joe Doebber, as noted, is 72 years old. While the estimates in the record vary, it is clear that he spends a scant amount of time actually present at Respondent's jobs, which may number up to four or five concurrently. The record leaves the clear impression that, although Joe Doebber is active in the business in estimating and bidding, and acts as the overall supervisor, Von Behren is the one who keeps it running.

Tim Motherway, who began employment in January 1992 and was laid off 5 months later, testified that he would call Von Behren every morning to find out where he should go to work, until near the end of his employment, when Von Behren told him to call Doebber instead. Scott Wilke, employed since December 1991, gave similar testimony. While this testimony does not exclude the possibility that Doebber first told Von Behren where the employees should report, Doebber testified on cross-examination that ''other employees called either [him] or David Von Behren to find out where they were going to work,'' which strongly suggests that Von Behren possessed some discretion in this matter.[9]

In his pretrial affidavit, Doebber averred that Von Behren will ''normally be the person in charge of the electrical jobs where he is working.'' Doebber described Von Behren at the hearing as a ''pinwheel type,'' i.e., an individual who may be called upon ''to go from job to job to job.'' On cross-examination, Doebber stated that there were other employees on these jobs ''[o]nly on rare occasions.'' The limited work schedules in evidence (1/11/92–5/29/92) show that Von Behren occasionally moved from job to job on the same days that other employees were on the jobs (e.g., on 1/27/92, he worked on 5 different jobs on 7 separate occasions).[10]

Stranghoerner, employed since March 1990, testified that he received his assignment by calling Doebber every morning; Reilly, with an employment history since October 1990, gave similar testimony. Stranghoerner testified to an exception, however: ''[U]nless Dave [Von Behren] told me to call him and see if he was done with his job the day before and I should pick up material for his job.'' Stranghoerner's affidavit distinguished between the ''60 percent'' of Von Behren's time spent in ''supervising'' jobs and the ''40 percent'' doing ''actual work.'' Stranghoerner, who made every effort at the hearing to reduce Von Behren to ''leadman'' status, nonetheless testified that Von Behren would be ''in charge of the job. If there is [sic] any questions or any problems, he would handle them . . . [H]e would be responsible for directing employees and seeing that the work was done'' (''on the job that he's lead man, yes.'').

Motherway credibly testified that when they would begin a job, Von Behren ''would go in and talk to whoever was owner of that particular building.'' Von Behren would then tell the waiting employees to unload the truck, and would take them ''through the building and show us where he

[6] As discussed later, under Board precedent Respondent may also have violative statements attributed to it if Von Behren is found to have been an agent or held out as a conduit for transmitting information to the other employees.

[7] There is evidence that he once recommended the hire of a friend and suggested a wage figure, but such evidence is too isolated to be useful. *Bowne of Houston*, 280 NLRB 1222, 1223 (1986).

[8] In the following factual findings, I rely essentially on the credited testimony of General Counsel's witnesses (Henning, Motherway, and Wilke), each of whom seemed more reliable than Respondent's witnesses Reilly, Stranghoerner, Von Behren, and Joe Debber. I further rely, in making these findings, on admissions and concessions made by the witnesses for Respondent.

[9] The General Counsel's generally fair and helpful brief errs in flatly stating that ''Von Behren admitted that employees telephoned him to get their work assignments.'' (Tr. 358–359, 363–364.) In the first passage cited, Von Behren answered the question ''No. Not hardly. Once in a while, maybe . . . . Joe may tell employees to call [him].'' The second citation refers to a long job on which apparently only Von Behren and Motherway primarily worked.

[10] Von Behren testified that he ''believed'' Doebber was in the hospital at that time.

wanted us to put certain devices and where he wanted the pipe run and how he wanted it done. . . . He would assign us to jobs. He would assign different people different things that he wanted done.'' In this regard, the testimony of Respondent's witness, Stranghoerner, is important: Von Behren would assign work ''based on employees' experience and skill.'' Further, Stranghoerner conceded, Von Behren would check employees' work if he saw something that ''had to be corrected or needed to be checked,'' and, if the work needed to be redone, Von Behren would direct the employee to fix it.

Von Behren conceded that his discretion was relied on by Doebber when he testified that Doebber will ask him if he is ''going to need a certain employee on the job.'' In line with this evidence of discretion is Motherway's testimony, not specifically contradicted, that if the employees finished their work prior to quitting time, and Von Behren was still on the job, they would ask him what else he wanted done. If Von Behren was not present, they would contact him by calling his pager—aside from Joe Doebber, Von Behren was the only employee who had a ''beeper''—and, without consulting anyone else, ''he would either tell us to go to another job or he would just send us home.''

Doebber testified that in May he spent about 2 hours (''That would be a good number'') a day going around to the various projects, which averaged three–four jobs at the time. Reilly, clearly biased in Respondent's favor, nonetheless testified that Doebber is not usually present on the smaller jobs; on the larger ones, he might show up for 30–60 minutes on the first day of the job; and ''maybe a week later,'' he will return to check on the progress of the job, and weekly thereafter. Reilly also stated in his affidavit that Von Behren ''is in charge of 60 percent of the jobs in which two or more employees are employed'' and, on such jobs, spends ''about 60 percent of the time supervising jobs and about 40 percent doing actual work that other employees did.'' In an affidavit given on June 30, Doebber stated his ''estimate'' that Von Behren ''spends about two-thirds of his work time where he was over one or more employees who were sent to help him on electrical work.''

The evidence seems quite clear that Von Behren had, and exercised, the authority both to assign and to responsibly direct employees, independently and in the interest of the Respondent. *Juniper Industries*, 311 NLRB 109 (1993) (Aponte), and cases cited; *Gem Urethane Corp*., 284 NLRB 1349 (1987) (Rygelski). The secondary (nonstatutory) indicia of authority to which the Board often refers, *Juniper Industries*, supra at 109, further cement the notion that Von Behren was something more than a leadman.

He was known to employees as a ''supervisor'' and, according to Motherway's uncontroverted testimony, Doebber so characterized him when Motherway was applying for a job (''[H]e said he would have to talk to his supervisor Dave to see if he needed any more men on the job''). If an employee arrived late for work, Von Behren might tell him to get to work early the next day. According to Motherway, Von Behren had to give permission for an employee to leave early. Von Behren's affidavit, which he repudiated in this respect at the hearing, states that if he tells Doebber that he does not need an employee, Doebber may tell him that the employee will not work the next day.

Von Behren admitted at the hearing that while sometimes Doebber tells him how a job should be done, at other times he himself will decide ''methods-wise.'' Doebber is teaching Von Behren how to estimate bids, and he evidently actually has made bids with Doebber's approval (''I don't bid a thing that don't go through Joe''). Von Behren, as noted, is the only employee other than Doebber who has a pager. He receives the highest hourly wage ($12 per hour), not much in excess of the only HVAC workman, Henning, who was paid $11.50, but substantially more than Reilly ($10) and Stranghoerner ($9.50); and because of the significant amount of overtime Von Behren works, Doebber estimated at the hearing that Von Behren earned $28,000–$29,000 in 1991 compared to Henning's $21,000–$22,000. Von Behren's year-to-date earnings as of May 15 were $13,110, in contrast to Henning's $8,567. Von Behren had a set of keys to the office and storage area, as do the Doebbers.[11] Aside from the Doebbers, Von Behren was the only employee who had a business card.[12]

Although I conclude that Von Behren was a statutory supervisor and that the challenge to his ballot should be sustained, I also conclude that, even absent such a finding, for purposes of the 8(a)(1) allegations, it was reasonable for employees to believe that Von Behren ''spoke for and acted on behalf of company management.'' *Dentech Corp*., 294 NLRB 924, 925 (1989); *Community Cash Stores*, 238 NLRB 265 (1978). At the hearing, Doebber declared that he ''absolutely'' relies on Von Behren ''to relay information from [him] to other employees.'' The record would have forced this conclusion even without Doebber's admission, and even if Von Behren were not rather clearly a supervisor, he would still be regarded as an agent whose statements may be attributed to Respondent. As we further explore the 8(a)(1) allegations, other evidence bearing on Von Behren's status will emerge.

B. *Was Henning a Supervisor?*

The case also raises the question of whether Bruce Henning was a statutory supervisor. The answer is clearly in the negative.

Henning was, as indicated, the only experienced HVAC employee, spending some 80 percent of his time on such work (and working by himself on that work 90 percent of the time) and the other 20 percent on electrical work (on which he worked alone perhaps 75 percent of the time). When other employees worked with him, he did some ''directing'' of them ''the way a journeyman would tell an apprentice'' what to do.

At best, the record shows that, on occasion, Henning was a leadman. As noted earlier, Respondent does not actually believe that Henning had been a supervisor (he was discharged on June 26), but it raises the issue on the theory that if Von Behren was a supervisor, so must Henning be. How-

[11] Henning had a key to the storage area which was taken away from him, as discussed infra.

[12] Von Behren testified that he had the cards because 5 or 6 years ago, when Doebber had a line called Royal Filters, Von Behren needed cards because he was more of a ''service type installer and salesman.'' However, after Royal Filters was dropped, new cards not mentioning that line were made up for him: ''Either I asked for them or—you know, [Doebber] just had them made up. I can't remember.''

ever, the evidence shows that the two men occupied quite distinctive capacities in May 1992. I conclude that Henning was simply an employee for purposes of the Act.

III. THE 8(A)(1) ALLEGATIONS

A. *Background*

Respondent has apparently never been party to a collective-bargaining agreement with a union. There is evidence, however, that it has in the past had some sort of relationship with an organization called the Congress of Independent Unions (CIU). Henning testified that in December 1991 Von Behren told him that he had to join the CIU and that Doebber would pay the dues for him. Complying with Von Behren's instruction, Henning signed a card.[13] There is no indication in the record that this evident effort to seek refuge under the shelter of the CIU ever yielded results, although one would suppose that Doebber approached all his employees with the same objective.[14]

The record discloses that in March and April Henning spoke to other employees about being represented by Local 1, IBEW. He then contacted Local 1 Agent Larry Hepburn. By May 7, Henning, Motherway, and Wilke had signed authorization cards, and Stranghoerner had refused to do so.

On May 11, the parties have stipulated, Hepburn and a colleague visited Doebber at Respondent's office and handed him a letter claiming majority status and requesting bargaining. We will consider the allegations of the complaint asserting that Joe Doebber, Joan Doebber, and Von Behren thereafter violated Section 8(a)(1) of the Act.

B. *The Alleged Violations*

Complaint subparagraph 5A: On May 12, in the course of an early morning telephonic discussion about Henning's assignment that day, Doebber said that he had heard from Local 1 the previous day and told Henning, ''I guess I'm going to have to get out of the air conditioning business.'' He did not elaborate, and the conversation ended.

On cross-examination, Henning agreed that in ''the early part of 1992,'' he and the Doebbers had had conversations about some expensive new Environmental Protection Agency (EPA) regulations which were to be put into effect around July 1 concerning ''how we handled the HVAC business.'' However, Doebber had not previously spoken of getting out of the air conditioning business and the May telephone conversation did not refer to the EPA rules, but rather only mentioned the Union. In that setting, the unadorned statement that ''I guess I'm going to have to get out of the air conditioning business'' plainly constitutes a threat, especially when uttered to the only air conditioning technician in Respondent's employ.

Complaint subparagraphs 5B and C: According to the credited testimony of Motherway, on May 12 Von Behren phoned him at home in the morning and asked, ''Tim, do you know anything about the union?'' Motherway said he did not. Von Behren then asked if Henning had said anything to him about the Union, and got another negative reply. Von Behren persisted: ''Tim, this is a pretty serious situation going on right now. Don't lie to me.'' Lying, Motherway said he was not. Von Behren then said that he had already talked to Reilly and still had to speak to Wilke and Stranghoerner, and Doebber had talked to Henning.[15] Von Behren went on to say that if the shop went union, ''We wouldn't have no work, that the only reason the Union is going after us is to put their own men back to work,'' and that Joe Doebber would ''probably close his doors.'' Von Behren did not contradict this testimony.

The fact that Motherway lied to Von Behren indicates that the questioning about the union activity was coercive, *Rossmore House*, 269 NLRB 1176 (1984), as does the related and unsubstantiated claim that Doebber would ''probably close his doors.''[16] The Supreme Court has held that when an employer makes a prediction as to the effect he believes unionization will have upon his company, it ''must be carefully phrased on the basis of objective facts to convey an employer's belief as to demonstrably probable consequences beyond his control. . . .'' *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969). The only testimony resembling an objective basis for Von Behren's stated belief was Von Behren's statement that 3–4 years before, when the IBEW was picketing a Doebber job, he asked Business Representative Hepburn if he could join the Union, and Hepburn replied that the Union had ''enough guys in the hallway that we can't get out to work.'' Although Hepburn was not called to give contrary testimony, I seriously doubt that such a conversation occurred; at any rate, such a stale comment is of no moment here.

The coercive interrogation and threat by Von Behren constitute violations of Section 8(a)(1). *Ideal Elevator Corp*., 295 NLRB 347, 351, 352 (1989).

Complaint subparagraph 5D: On May 13, Henning made his usual early morning call to Doebber to discuss that day's work assignment. Again, as the conversation ended, Doebber said, ''I'm not sure what I'm going to do, whether I'm going to stay in business or go out of business. I can probably find something for Dave to do because of his membership in the CIU. If I were you, I would look for another job.''

Doebber's general defense to his statements about closing the business and inability to get work in the event of unionization was that he ''didn't have a formula to be able to get work that was consistent with what I knew the area contract of IBEW was.'' This does not amount to a sufficiently demonstrable proposition so as to constitute a proper showing of rationale required by *Gissel Packing*, supra. An employer is not permitted, under *Gissel*, to jump from the unstated or unproven premise that a union's wage scale is fixed and immutable to a conclusion that he may have to shut down in the event of unionization, and convey this ultimate conclusion to employees.

The statements made to Henning on May 13 obviously related to the union demand and were coercive within the meaning of Section 8(a)(1).

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[13] The document in evidence, G.C. Exh. 2, is an initiation fee and dues deduction card signed by Henning on December 11, 1991. Von Behren corroborated that he had solicited it. There is also a document, G.C. Exh. 3, which shows that in December 1991 an additional $75 was added on one occasion to Henning's weekly wage and then simultaneously deducted.

[14] No claim of unlawful action is founded on this evidence.

[15] This statement, as well as the entire conversation, adds confirming evidence of Von Behren's status.

[16] Again, it also reflects on Von Behren's supervisory status.

Complaint subparagraph 5E: According to Wilke and Motherway, while they were working at the Centocor jobsite on May 13, Doebber stopped by. After a preamble, Doebber asked the employees, ''I guess you know that the Union is trying to organize us.'' Motherway replied that he did know, having been so told by Von Behren on the previous day. Wilke denied knowledge. Doebber said that he did not mind if they ''went union, but he told the union that he didn't do no union work and that he didn't pay union wages.'' Doebber went on to say that ''if we went union, he probably wouldn't be in business no more, that he would close his doors'' and that ''there is no union work out there right now.'' Making reference to an upcoming job at UPS, Doebber said that he ''didn't know if he was going to take it or not'' because he ''didn't have union wages built into the UPS job.'' The foregoing quoted matter is from Motherway's testimony; Wilke's was more condensed and not as threatening.

Wilke did not mention interrogation, but rather had Doebber opening the conversation about the Union by saying that he had been contacted by Local 1, that he ''had enough people at Debber that wants to go union,'' that he could not pay union scale on the upcoming UPS job, and that he ''didn't know what he was going to do, if he was going to call it quits or going to go down to the vote.'' Doebber did not contradict the testimony of the employees. He did, moreover, admit telling employees that he was not going to bid on any work until he found out whether they were going to vote to be represented by IBEW.

I am inclined to credit Motherway's detailed testimony about the interrogation. As to the remainder, under either version it would appear that Doebber at least gave the employees the impression that he might cancel the UPS job and might even ''call it quits'' before an election was held. Even under Wilke's milder account, the statements (and the interrogation) constituted 8(a)(1) violations. *Walter Garson, Jr. & Associates*, 276 NLRB 1226, 1231–1232.

Complaint subparagraph 5F: Shortly after Doebber visited Wilke and Motherway at Centocor, Von Behren came to that job on May 13. He asked Motherway if he could work late that evening, and received an affirmative reply. Von Behren then told Motherway to get some materials from Von Behren's truck and return to work because he wanted to speak to Wilke.[17]

According to Wilke, Von Behren ''asked me if I talked to Bruce Henning.'' Wilke dissembled. Von Behren then asked if he had signed an IBEW card; again lying, Wilke said ''No.''[18]

During the evening of May 13, while working at Centocor, Von Behren told Motherway that ''if we go union, you know, we won't work. That we'll close down.'' With this cheerful introduction, Von Behren then asked if Motherway had signed a union card, which Motherway falsely denied. Von Behren then drew a similar denial to a question of whether Motherway knew of any other employee who had signed. Von Behren did not deny holding such a conversation with Motherway. I find that the questioning of Wilke, whose false answers indicate coercion, and the threat of closure together with the questioning which Motherway felt compelled to lie about, constituted coercive behavior prohibited by Section 8(a)(1).

Complaint subparagraph 5G: On May 14 at the Centocor site, Wilke entered the maintenance shop and asked Von Behren ''what was going on with the Union because Rodger Stranghoerner had asked me if I had spoke to Bruce Henning also.''[19] Von Behren replied that the Union had 51 percent of the Debber employees and he ''wanted to know who the other two people were that wanted to go union.'' He also declared that ''the only reason that the union wanted to come in is to close Doebber's business down'' and that he would ''fire employees if he found they were lying to him.'' Wilke also recalled Von Behren speaking of a friend who was associated with a formerly large electrical company that now only had 6 employees; the record does not clearly disclose that the company had been unionized. While I would assume, given the context of the conversation, that it was unionized, the record is not clear enough to draw such an inference.

Von Behren gave no testimony challenging Wilke's. I am not sure, given Wilke's opening gambit, that Von Behren's response (he ''wanted to know who the other two people were that wanted to go union'') constitutes, as the complaint alleges, ''ask[ing] an employee to ascertain and disclose to Respondent'' the union activities of other employees, but Von Behren's stated desire to have this information would have clearly indicated to a reasonable employee that Respondent would deal harshly with such individuals. I cannot find that Von Behren (as the complaint alleges and the General Counsel presumably would argue) ''impliedly threatened plant closure if the Union's efforts were successful''; the reference to the Union wanting to come in only to close down Doebber's business is not a direct threat of employer action. I do find, however, that this statement is a prediction lacking the necessary objective facts as to demonstrably probable consequences within the meaning of *Gissel*, supra. Moreover, in addition to Von Behren's implication that Respondent would deal harshly with cardsigners, Respondent also violated Section 8(a)(1) by Von Behren's threat to ''fire'' employees who lied to him about their union sentiments.

Complaint subparagraph 5H: On the following day, May 15, Von Behren convened a meeting of employees Wilke, Motherway, Stranghoerner, and Reilly in the Centocor maintenance shop. He opened the meeting, which lasted for about 20 (Motherway) or 45 (Wilke) minutes and was held on working time, by saying that he was speaking to them because Doebber would get in trouble if he did the speaking. Von Behren went on to say that he wanted to know which employees wanted union representation and that employees had been lying to him about that; that he knew Henning wanted the Union because they had discussed the matter once; that when he found out who was lying to him, he was going to ''bust [or 'beat'] some heads''; that there was a 3-year waiting period to get work at the Union and that if they

[17] Again, Wilke's testimony was less pointed. He said that when Von Behren came, he and Motherway approached his van because they both needed materials. He agreed, however, that ''David said to me that he needed to talk to me.'' Again, I am inclined to accept Motherway's more precise version.

[18] Motherway corroborated Wilke's testimony by testifying that after Von Behren departed, Wilke told him that Von Behren had been ''quizzing'' him about the Union.

[19] Since Wilke had signed a card, this was presumably an attempt to get a reading on the current situation or to throw Von Behren off his trail.

did go Union, ''Joe would close his doors and there would not be no more work''; that he, Von Behren, was going to be ''pissed off'' if he had to hire a lawyer to get to the bottom of the problem; that if they went Union, there would be no work and all the employees would get was a ''white card'' which the Union could retract at will; that he did not know why Henning, who had previously talked about getting a union and who Stranghoerner had said had come to his house with Union Agent Hepburn, was trying to ''upset this boat''; that he did not believe any of the employees were capable of being journeymen electricians; that employees should call him that evening and tell him who was in the Union, assuring them that ''nothing would happen'' to them if they did so and saying that he just wanted to tell the union supporters why the Union was a ''bad idea''; and that ''him and Joe'' were going to probably stop bidding on jobs because they ''didn't know what was going to go on or what was going to happen.''

Von Behren testified that at this meeting he asked how many employees ''still wanted to be CIU.'' He stated that he told the employees that if they ''go IBEW, there is no work right now,'' and so they would leave the shop and be ''thrown out in the hall'' on temporary white cards, to join 500 or more unemployed electricians. He agreed that he told them that ''right now, we can work as far as [I] know,'' but if they select the Union, ''You're not going to be working.'' Von Behren ''probably'' said that if he lost his job, he was ''going to kick some ass,'' and he did say that employees, once unionized, would have to work 6 months to get benefits. He also said that he wanted to ascertain the identity of the union supporters so that he could try to find out why they wanted the Union and try to talk them out of it, but he denied saying, or was ''not sure'' he said, or ''[didn't] recall'' saying, or ''[didn't] know'' whether he said, a number of things. A pretrial affidavit given on June 5 shows that he mentioned that Henning instigated the Union, that the present job was winding down, and that as far as he knew, ''[w]e don't have any more jobs coming up.''

Subparagraph 5H of the complaint alleges threats of plant closure, unspecified reprisals, refusal to accept work or bid jobs, and lack of work; solicitation of employee reporting on union activities and of grievances; and impliedly advising employees of the futility of selecting the Union as their bargaining representative. Out of the sometimes contradictory mass of evidence, I find that Respondent did threaten a refusal to accept work and a lack of work by Von Behren saying that he and Doebber were probably going to stop bidding on jobs because they did not know what was going to happen. I do not detect any threats of ''unspecified'' reprisal, but I do conclude that the statement that Doebber would ''close his doors'' in the event of unionization and that Von Behren would ''bust some heads'' if he found out who was lying to him was coercive. Von Behren did also solicit employees to ''report on other employees' union activities,'' and while the employees testified that Von Behren said that he only wanted the names of the union supporters so that he could find out why they wanted the Union, the context of the talk was such that it might reasonably be considered coercive. Saying that he wanted to find out why the employees desired union representation amounts to a ''solicitation of grievances,'' which, under Board law, raises an inference that the employer is making a promise to resolve the grievances so elicited, an inference which is rebuttable by the employer. *Uarco Inc*., 216 NLRB 1, 2 (1974). The inference was not rebutted here. On the basis of the entirety of Von Behren's remarks, finally, he clearly conveyed to the employees the utter futility of choosing the Union to represent them.

Complaint subparagraph 5I: On May 15, Doebber had a conversation with Henning about unions. He related to Henning that on a recent trip to Reno, he overheard a woman say that her father, a union contractor, was ''hurting for business.'' Doebber further regaled Henning with the story of a relative who was a member of Local 1, was 175th on the bench, and did not expect to work the rest of the year. Finally, Doebber said that he and his wife were dining that evening with Steve Coats et ux and that he had had Coats put in a small air conditioning job for him and was probably going to have Coats ''put in his air conditioning for him.'' As we shall see, this was the same day that Doebber unlawfully withdrew from Henning the privilege of using a company truck.

I agree with the General Counsel that there was a clear implication here that Doebber was assigning work normally done by Henning to Coats because of Henning's union activities. Respondent thus violated Section 8(a)(1).

Complaint subparagraph 5J: On May 20, Von Behren came to the cafeteria table where Motherway, Reilly, and Stranghoerner were taking a break at the UPS site, threw some CIU cards on the table, and said, ''Sign these.'' Stranghoerner and Reilly did so, but Motherway had questions, among them what the cards were, what ''do you get for joining the CIU?,''[20] and what happens if an employee refuses to sign. Von Behren answered the last question by saying ''You'll be fired.'' Motherway signed. Von Behren then asked Stranghoerner to take a card over to Henning. Stranghoerner said that he did not want to and told Von Behren to do it. Von Behren said that if he did, a fight would ensue. He further said that he ''didn't like'' Henning because he was seeking union representation, and that Henning would not be working longer if he could help it. After giving Reilly and Motherway their assignments for the following day, Von Behren told the employees to return to work.[21]

I agree with the General Counsel that Respondent violated Section 8(a)(1) by Von Behren's instruction to the employees to sign CIU cards on pain on discharge. The statement that Von Behren didn't ''like'' Henning because he was seeking union representation probably constitutes unlawful ''dispar-

[20] When Motherway asked this question, Von Behren said, ''Who asked you to ask that, IBEW?'' This is apparently the coercive interrogation that the complaint and the General Counsel's brief refer to. It seems to me more a comment than a real question, and I would not find it violative.

[21] Von Behren testified that he asked ''all employees to sign on'' for the CIU ''in this time frame of May 20.'' Respondent's witness, Reilly, testified that Von Behren came to the UPS site and asked apparently only Reilly (''if I would like to sign the card or not. . . . I said, yes, I would'') to sign. Without being asked, Reilly volunteered that Von Behren specifically said, ''You do not have to sign this card.'' While a very relaxed witness, Reilly was rather clearly biased in Respondent's favor, and my impression of Motherway leads me to prefer him over Reilly.

agement,'' and I also agree that Von Behren effectively, and unlawfully, threatened Henning's employment.

Complaint subparagraph 5K: On May 22, Von Behren brought paychecks to the UPS jobsite. According to Motherway, Von Behren said, ''I guess my little ploy worked that one Friday when I threatened everybody,'' going on to add that he ''now knows who the other employee is that wants to go union.'' He identified that employee as Wilke and explained(?): ''It could only be Scott because it was only Scott and us three that were there.'' Motherway continued, ''And he said that it was Scott Wilke who he knew that wanted to go union and who was the other employee.''

Presumably it is the foregoing that the General Counsel relies on for the claimed unlawful ''impression of surveillance.'' Whatever Von Behren may have meant by what Motherway says he heard, it is manifest that Von Behren was boasting of having somehow *deduced* that Wilke was prounion, and was not implying he had come to that conclusion by surveillance of union activities. Thus, unlike *Flexsteel Industries*, 311 NLRB 257 (1993), Von Behren gave no indication that Respondent was ''closely monitoring the degree of an employee's union involvement.''[22] I shall recommend dismissal of this allegation.

Motherway also asserted that during this conversation, Von Behren said that he could not believe that Henning and Wilke wanted to go union, and he stated that ''they weren't going to be working here much longer.'' He told the employees that air conditioning work was being subcontracted to a Jim Blair (an associate of Steve Coats) ''mainly to punish'' Henning. This testimony was undisputed, and the violation of a threat of discharge and subcontracting in retaliation for favoring union representation are clear.

Complaint subparagraph 5L: Later on May 22, Von Behren returned to the UPS site and handed the three employees a slip of paper bearing the name and telephone number of the Board agent assigned to investigate the case.[23] He told the employees that he would like them to call the agent and say that the charge filed on May 20 was false. After discussing the election for which the Union had petitioned on May 14, and mentioning that although the IBEW had classified him as a ''supervisor,'' that was ''going to change'' so that he would be a ''foreman,'' Von Behren told the employees to go inside and clean up, and to call him on Monday to ''find out where we're supposed to go.''

Stranghoerner's version of this conversation conceded that Von Behren had given them the name and number of the Board agent, but only said, ''[I]f you want to get Joe out of trouble, you could call this number and give your opinion of what I said [,] that Joe wasn't responsible for what I said.'' Although I see little material distinction between the two accounts, I would, for what it is worth, credit the more believable Motherway as against the manifestly biased and otherwise unreliable Stranghoerner.

Urging an employee to tell a Board agent that a charge is groundless is coercive interference with Section 7 rights and violative of Section 8(a)(1).

Complaint subparagraph 5M: The parties stipulated that on May 22, Joan Doebber issued a memorandum to all employees to which was attached a marked-up copy of the charge filed on May 20. The two items accompanied the paychecks distributed to the employees. Doebber stated in the memorandum that she was ''amazed'' by the charges, which led her to question whether it was the Union or the employees who had lied to the Board. She dwelt at some length on the extraordinary efforts her husband had made to assist employees and told the employees to pay ''particular attention'' to the printed matter on the form related to the penalty for willfully false statements.

The Doebbers seemed to me to be basically decent and law-abiding people (although I did not consider Joe Doebber's testimony to be reliable). They may well have thought that they had done nothing wrong and that Von Behren's conduct, whatever it may have been, was neither unlawful nor attributable to them.

However, when an employer so sharply criticizes the filing of charges, and suggests that employees may have engaged in deceit, the reasonable tendency of such behavior is to restrain them from initiating, or assisting in the investigation of, a charge. This conduct violates Section 8(a)(1). *Art Steel of California*, 256 NLRB 816, 821–822 (1981).

Complaint subparagraph 5N: On May 15, prior to the filing of the charge but after the union activity had commenced, Respondent issued to Von Behren, Henning, Reilly, and Stranghoerner paychecks which (1) included a bonus of $75 and (2) deducted the same sum as ''union dues,'' which monies were remitted to the CIU. Joe Doebber testified that he had a ''practice'' of doing so, although his company had never had a labor agreement with CIU.

The cases on which the General Counsel relies are *Sweater Bee by Banff, Ltd.*, 197 NLRB 805 (1972), and *Western Auto Associate Store*, 143 NLRB 703, 705 (1963). Both cases deal with charges of unlawful financial assistance to labor organizations in violation of Section 8(a)(2). In both cases, unlike here, there was proof that the employees for whom dues were paid had not signed checkoff authorizations. In both cases, the organizations involved were found to be ''labor organizations'' within the meaning of Section 2(5) of the Act; here, the complaint makes no such allegation, and the record contains no evidence thereon.[24] The cases do not stand for the simple proposition, as the General Counsel contends, that ''[a]n employer engages in unlawful conduct when it pays the union dues of its employees.''

Finding nothing inherently unlawful about an employer paying union dues for employees who may have willingly authorized dues deduction,[25] I shall recommend dismissal of this allegation.

Complaint subparagraph 5O: Wilke testified that on June 4, after lunch, as he was working on the UPS job, Von Behren came up to him and said he had a CIU card for Wilke to sign, adding, ''you do want to go CIU, don't you?'' Wilke replied that he ''guess[ed]'' he did, and was ''already in this CIU with another employer.'' They walked out to

[22] As Motherway testified, Von Behren ''just came to his own assumption that Scott was the one.''

[23] The formal documents show that Doebber had only received a copy of the charge, and the name of the Board agent, on May 21.

[24] It happens that in *Western Auto Associate Store*, supra, the labor organization involved was ''Congress of Independent Unions, Local 50.'' That decision was rendered more than 30 years ago.

[25] As earlier shown, Henning was instructed to join the CIU in December 1991. As also noted, this was not claimed to have been an unlawful act.

Von Behren's van to do the signing, and at that time Wilke stated that he did not want dues deducted because he did not ''believe that I wanted to be represented by the [CIU],'' which had done ''nothing for me.''[26] He signed the authorization card and filled out, but did not sign, the deduction form. He told Von Behren that he wanted to talk to Doebber about the deduction, and later on June 4 spoke to Doebber by telephone (after Doebber had been interviewed by a Board agent that day). Doebber told Wilke ''something about some sort of act that [he][could] not do that anymore.''

While it would appear that the dues deduction problem was quickly and satisfactorily resolved, the fact remains that Von Behren did solicit in a peremptory manner the signing of an authorization card by Wilke. This coercive act clearly violated Section 8(a)(1).[27]

IV. THE 8(A)(3) ALLEGATIONS

The complaint contains two basic claims of Section 8(a)(3) discrimination against Bruce Henning (although they are expressed in three separate allegations).

A. *The Rescission of the Company Vehicle Privilege*

Henning was, as set out earlier, the instigator of the union effort: in March and April, he spoke to other employees about the benefits of affiliation with Local 1; in May he made contact with Union Agent Hepburn; and also in May, he and Hepburn visited Stranghoerner (later to be a witness for Respondent in this hearing) and tried, without success, to enlist him in the cause. Respondent's knowledge of Henning's activity is shown by Motherway's testimony that, on May 15, Von Behren had said that Henning had revealed his interest in a union in an earlier discussion with Von Behren and also said he knew that Henning and Hepburn had visited Stranghoerner to proselytize him.

Henning had been allowed to use a truck of Respondent's since 1990 to commute between home and work. On occasion, Doebber would tell Henning that he needed the truck for a weekend. On Friday, May 15, Doebber told Henning that he wanted to use the truck over the weekend. When Henning dropped off the truck at Doebber's house, and they were waiting for Henning's wife to pick him up, they had the conversation previously described in complaint subparagraph 5I, supra.

When Henning came to work on May 19, and went to Doebber's home to get the truck, Doebber asked him to turn over Henning's keys for Doebber's summer house (which Henning had been given probably in the spring of 1991, and which he kept because he occasionally performed work on the house) and the keys to the storage area (which had been in his possession prior to the spring of 1991). Doebber also told Henning to drop the truck off before he went home that evening. After May 15, the right to use the truck to commute and, I assume, the summer house and storage keys were not returned to Henning again.

The record shows that there had been good and sufficient reasons for permanently relieving Henning of the truck privilege on earlier occasions. In February or April, while using the vehicle on a weekend for personal reasons, Henning was involved in some sort of incident at a service station which resulted in the issuance of an arrest warrant against him. Doebber took the truck away from Henning but returned it after 2 weeks. In the late fall of 1991 or the spring of 1992, two tools were stolen from the truck while parked at Henning's residence. Henning was not required to forfeit the use of the truck.

Respondent brought out that its home office parking lot was being enlarged in the spring of 1991. At the hearing, Henning testified that the lot, prior to enlargement, could have accommodated the truck, although it would have been a ''tight'' fit. But Doebber admitted that the parking lot enlargement was completed on April 8. Doebber also testified that the truck is now not regularly driven by anyone, and he drives it if he has some reason to.

The standard for determining whether the General Counsel has made out a violation of Section 8(a)(3) is (1) an appraisal of whether a ''prima facie'' case of a motivation to discriminate against an employee has been proven by the General Counsel and (2) if so, whether the respondent has demonstrated that it would have acted the same regardless of the union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).[28] The Board has repeatedly stated that the General Counsel meets its prima facie burden by showing ''union activity, employer knowledge, timing, and employer animus,'' and sometimes less. *Best Plumbing Supply*, 310 NLRB 143 (1993); *Weather Shield of Connecticut*, 300 NLRB 93, 95 (1990); *Appelbaum Industries, Inc*., 294 NLRB 981, 983 (1989); *Kona 60 Minute Photo*, 277 NLRB 867, 869 fn. 2 (1985) (timing, other unlawful conduct, and union animus); *Heartland Food Warehouse*, 256 NLRB 940 (1981) (apparently no specific knowledge needed to make prima facie case).

Each of these elements has been established here, and more: Respondent's attempted insinuation that Henning was allowed to use the truck because of lack of parking space which was not alleviated until May, whereas in fact the enlargement of the parking lot was finished on April 8; Respondent's failure to permanently deprive Henning of use of the truck on two previous occasions which might have been thought to justify rescission of the privilege, in contrast to the decision to do so on May 15, which Respondent has not really explained in any way;[29] and Respondent's simulta-

[26] The authorization card given Wilke by Von Behren contained a dues-checkoff form.

[27] It may be noted that while Von Behren insisted that he remembered ''exactly'' that Wilke signed the card at his behest on May 20 when the three other employees did (see complaint subpar. 5J, above), Wilke in fact was not approached and did not sign until 15 days later.

[28] Although the *Wright Line* test is predicated on a mixed-motive situation, the Board stated in *Wright Line* that it would apply the approach in all 8(a)(3) cases, as well as in 8(a)(1) cases involving motivation. 251 NLRB at 1089.

[29] Respondent was not represented by an attorney in this proceeding. Joe Doebber did, however, present witnesses, and he himself testified. In doing so, Doebber only said, on direct, with respect to the truck, that he had allowed Henning to use it because of his ''financial condition.'' He did not attempt to explain what caused him to rescind his benevolence. Doebber's wife, on redirect examination, tried to suggest some reasons for taking back the truck, such as ''security, it was used personally. We had insurance risks. We needed it on occasion. We found beer cans in the back and various and other items going to personal use.'' Doebber responded airily: ''Those were factors. I didn't want to furnish a personal vehicle to

Continued

neous and also unexplained direction to Henning on May 19 to turn over the keys to Doebber's summer house and to the storage area.

A strong case of 8(a)(3) discrimination has been made out here by the General Counsel, and Respondent has not remotely begun to meet its *Wright Line* ''in any event'' burden. Accordingly, I conclude that by depriving Henning of use of the truck after May 15, Respondent violated Section 8(a)(3) and (1) of the Act.

B. *The Alleged Unlawful Layoff of Bruce Henning*

The amended complaint alleges that on or about May 18, Respondent unlawfully laid off Henning.

The record shows that Henning did not work on Monday, May 18; worked 8 hours on Tuesday, May 19; worked 5.5 hours on Wednesday, May 20; did not work on Thursday, May 21 or Friday, May 22; was paid for the Memorial Day holiday on Monday,[30] May 25; did not work on Tuesday, May 26; and thereafter worked steadily (except when he took time off and was ill) until his discharge on June 26. On brief, the General Counsel makes it clear that the violations alleged occurred on Monday, May 18; Thursday, May 21; Friday, May 22; and Tuesday, May 26. Henning testified that on those days, he called Doebber early in the morning and was told that there was no work for him, with Doebber saying that ''work was slow.''

It appears from the pay records (which show only January 11 through May 28 schedules) that Henning did not work from time to time in the immediate past. He did not work on February 4, on March 7 (and only worked 4 hours on March 6), on 4 days in the week ending March 13, and on 3 days in the following week and the week after that.

Relying on the doctrine earlier cited, the General Counsel urges that given Respondent's likely knowledge of Henning's union activity, its proven animus toward the Union, and the timing of the layoff days soon after the onset of the union campaign, the General Counsel has established a prima facie case, shifting to Respondent a burden which it has not successfully shouldered.

The Doebbers, being unrepresented by counsel, did not present any testimony regarding the reason for Henning's 4 days of layoff in May, and the General Counsel is correct in saying that if the burden shifted to Respondent, it has failed to meet its evidentiary obligation.

This is a very interesting test of the Board's holding that knowledge—activity—animus—timing satisfy the General Counsel's need to present a prima facie case. Here, the circumstances as a whole do not indicate an illegal layoff: Henning did not work most of March, long before his union activity, and he conceded the undeniable truth that layoffs are common in the construction industry. Although the question has not been dealt with at any length by the courts, at least one, the Court of Appeals for the Fourth Circuit, has taken a different approach to the question of what constitutes a prima facie case. In *NLRB v. Daniel Construction Co.*, 731 F.2d 191, 197 (4th Cir. 1984), a post-*Wright Line* decision, the Court stated:

> [General Counsel] must demonstrate by preponderant evidence (1) that the employee was engaged in protected activity; (2) that the employer was aware of the activity; and (3) that the activity or the worker's union affiliations was [sic] a substantial or motivating reason for the employer's action. Once it proves these three elements, the General Counsel has established a prima facie case of unlawful discharge.

The foregoing is, obviously, substantially different than the Board's test. Circumstances such as those present in the instant case suggest that the Board's standard might be broadened to include some evidentiary requirement in addition to the four (or three) factors that the Board now accepts as establishing a prima facie case.

Only recently, however, in *Capitol EMI Music, Inc.*, 311 NLRB 997 (1993), the Board clearly stated that it has knowingly transferred to the respondent the burden of proving licit motivation. In that case (at 1000 fn. 20) the Board stated:

> The Board already imposes an evidentiary burden on the party with the best access to the proof of motivation in cases alleging Section 8(a)(3) misconduct, the respondent. See *Wright Line*. . . .

In view of the Board's settled approach to this subject, I am constrained to conclude (1) that the General Counsel has established the prerequisite prima facie case, and (2) that the Respondent has failed to demonstrate that, even in the absence of union activity, it would have laid Henning off on May 18, 21, 22, and 26.[31] Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by withholding work from Henning on the foregoing dates.

V. THE CHALLENGED BALLOTS IN CASE 14–RC–11158

On the basis of the foregoing discussion, I conclude that the challenge to the ballot of David Von Behren should be sustained, the challenge to the ballot of Bruce Henning should be denied, Henning's ballot should be opened, and a revised tally of ballots should be issued.

CONCLUSIONS OF LAW

1. Respondent Joan Doebber, d/b/a Debber Electric, St. Louis, Missouri, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 1, International Brotherhood of Electrical Workers, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. David Von Behren was, at material times, a supervisor within the meaning of Section 2(11) of the Act.

4. Bruce Henning was not, at material times, a supervisor within the meaning of Section 2(11) of the Act.

5. By, in May and June 1992, engaging in the following conduct, Respondent violated Section 8(a)(1) of the Act:

(a) Threatening to close its business because of organization by the Union.

anybody.'' But he admitted on cross that he allowed Von Behren to use a company van to commute and for other personal reasons.

[30] I assume this to be true. The records of other employees, although not Henning's, show that they were paid 8 hours for the ''Holiday.''

[31] I exclude May 25, since it seems clear that the Memorial Holiday was not a day of layoff.

(b) Coercively interrogating employees.

(c) Threatening not to pursue business because of organization by the Union.

(d) Asserting that the Union wanted to organize Respondent only to close it down.

(e) Indicating that it would deal harshly with signers of authorization cards.

(f) Threatening to discharge employees who lied about their union sentiments.

(g) Threatening to do violence to employees for lying about their union activities.

(h) Asking employees to report on the union activities of others.

(i) Impliedly promising benefits if the employees would withdraw support from the Union.

(j) Conveying the futility of choosing the Union to represent employees.

(k) Implying that Respondent was subcontracting work because of employee union activities.

(l) Instructing employees to sign authorization cards on pain of discharge.

(m) Threatening to discharge employees because of their union activities.

(n) Disparaging an employee because of his union activities.

(o) Urging an employee to tell a Board agent that a charge is groundless.

(p) Criticizing the filing of charges and suggesting that the employees may have engaged in deceit.

6. By, in May 1992, engaging in the following conduct, Respondent violated Section 8(a)(3) and (1) of the Act:

(a) Rescinding Bruce Henning's use of a company vehicle.

(b) Laying off Bruce Henning on May 18, 21, 22, and 26.

7. The aforesaid violations affect interstate commerce.

8. In other respects alleged in the complaint not found violative above, Respondent has not violated the Act.

THE REMEDY

Having found that Respondent unlawfully rescinded Bruce Henning's truck privilege after May 19, 1992, and laid off Henning on May 18, 21, 22, and 26, 1992, I shall recommend that it be required to make him whole for any loss of earnings and for commutation expenses he may have suffered thereby, with interest in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend the issuance of a cease-and-desist order and the posting of appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[32]

ORDER

The Respondent, Joan Doebber, d/b/a Debber Electric, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close its business because of organization by the Union.

(b) Coercively interrogating employees.

(c) Threatening not to pursue business because of organization by the Union.

(d) Asserting that the Union wanted to organize Respondent only to close it down.

(e) Indicating that it would deal harshly with signers of authorization cards.

(f) Threatening to discharge employees who lied about their union sentiments.

(g) Threatening to do violence to employees for lying about their union activities.

(h) Asking employees to report on the union activities of others.

(i) Impliedly promising benefits if the employees would withdraw support from the Union.

(j) Conveying the futility of choosing the Union to represent employees.

(k) Implying that Respondent was subcontracting work because of employee union activities.

(l) Instructing employees to sign authorization cards on pain of discharge.

(m) Threatening to discharge employees because of their union activities.

(n) Disparaging an employee because of his union activities.

(o) Urging an employee to tell a Board agent that a charge is groundless.

(p) Criticizing the filing of charges and suggesting that the employees may have engaged in deceit.

(q) Discriminating against employees for engaging in activities protected by Section 7 of the Act.

(r) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Bruce Henning whole in the manner set forth in the remedy section of this decision.

(b) Post at its place of business in St. Louis, Missouri, copies of the attached notice marked ''Appendix.''[33] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by Respondent's authorized representative, shall be posted by it for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[32] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[33] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

IT IS ALSO ORDERED that the portions of the complaint found to be without merit are hereby dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close our business because of organization by the Union.

WE WILL NOT coercively interrogate our employees.

WE WILL NOT threaten not to pursue business because of organization by the Union.

WE WILL NOT assert that the Union wants to organize our business only to close it down.

WE WILL NOT indicate that we would deal harshly with signers of authorization cards.

WE WILL NOT threaten to discharge employees who lied about their union sentiments.

WE WILL NOT threaten to do violence to employees for lying about their union activities.

WE WILL NOT ask employees to report on the union activities of others.

WE WILL NOT impliedly promise benefits if employees would withdraw support from the Union.

WE WILL NOT convey the futility of choosing the Union to represent employees.

WE WILL NOT imply that we are subcontracting work because of employee union activities.

WE WILL NOT instruct employees to sign authorization cards on pain of discharge.

WE WILL NOT threaten to discharge employees because of their union activities.

WE WILL NOT disparage an employee because of his union activities.

WE WILL NOT urge an employee to tell a Board agent that a charge is groundless.

WE WILL NOT criticize the filing of charges and suggest that employees may have engaged in deceit.

WE WILL NOT discriminate against employees for engaging in activities protected by Section 7 of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL make Bruce Henning whole, with interest, for laying him off on May 18, 21, 22, and 26, 1992, and for commutation expenses incurred after May 15, 1992.

JOAN DOEBBER, D/B/A DEBBER ELECTRIC